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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 752

G. H. MARTIN, *Petitioner*

v.

LAURA S. STRAITZ, Guardian of Beverly Ann Straitz, a Minor, and Frances Straitz, as Ancillary Administratrix of the Estate of William Straitz, Deceased, *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

Petitioner prays that a Writ of Certiorari be issued to review the judgment of the Supreme Court of the State of Florida in its Civil Action No. 32413.

OPINIONS BELOW

The *per curiam* opinion of the District Court of Appeal of Florida, Second District, in Civil Action No. 3346 (Appendix A, pp. 5a-7a) is reported at 135

So. 2d 239. The orders of the Supreme Court of Florida in Case No. 32413 are reported at 156 So. 2d 861 and are set forth in Appendix A, pp. 18a and 21a.

JURISDICTION

The order of the Supreme Court of Florida denying, without opinion, Petitioner's Petition for Writ of Certiorari was entered July 29, 1963 (Appendix A, p. 18a) and the order denying his Petition for Rehearing was entered October 15, 1963 (Appendix A, p. 21a). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3). The issue of Petitioner's rights and immunities under the Fourteenth Amendment to the Constitution of the United States was raised in his Petition for Writ of Certiorari to the District Court of Appeal of Florida, Second District (Appendix A, p. 8a), and his Petition for Rehearing filed in the Supreme Court of Florida on August 9, 1963 (Appendix A, p. 18a).

QUESTIONS PRESENTED

1. Whether the refusal of the Supreme Court of Florida to review the judgment of the County Judge's Court in and for Broward County (Appendix A, pp. 1a and 3a), affirmed in the District Court of Appeal of Florida, Second District (Appendix A, pp. 5a-7a), was a denial of Petitioner's right to due process under the Fourteenth Amendment to the Constitution of the United States in that the judgment of the County Judge's Court was *dehors* the record and, indeed, based upon an erroneous factual predicate.

2. Whether the judicial review afforded Petitioner in the Supreme Court of Florida and in the District Court of Appeal of Florida, Second District, in this

case under the system of certiorari jurisdiction in effect in the Supreme Court of Florida was a denial of Petitioner's right to due process under the Fourteenth Amendment to the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The provisions of the Fourteenth Amendment to the Constitution of the United States and the pertinent provisions of the Constitution of the State of Florida which are applicable in the instant case are set forth in Appendix B, p. 22a.

STATEMENT

This case arises out of an order of the Supreme Court of Florida which refused to grant a request for review of the decision of the District Court of Appeal of Florida, Second District, which, in turn, upheld a decision of the County Judge's Court of Broward County, Florida, said original decision being based upon matters outside the record before the County Judge.

The rights of the parties involved in this case were originally considered in *In re Estate of William Straitz*, 135 So. 2d 239 (1961), in which the District Court of Appeal of Florida, Second District, reviewed the extended and incredible litigation in this case, reversed the County Judge's Court and ordered that Court to determine the amount of reasonable attorney's fees admittedly due Petitioner herein, and to have those fees paid out of the Estate of William Straitz, deceased, from funds in that Estate. On remand, the County Judge's Court, without the taking

of further testimony, entered final judgment for the sum of $10,000.00 as attorney's fees for Petitioner. This amount is approximately one-half of the amount ($19,916.35) which was shown by undisputed expert proof to be due Petitioner and which was below that which the Court had power and discretion to enter. See *Dade County* v. *Renedo, et al*, 147 So. 2d 313 (1962) at page 316 where the Supreme Court of Florida said:

> "Where expert witnesses are produced and testify as to the value and such testimony is not, in itself, or in relation to other evidence, properly susceptible of different interpretation as in this case, then the jury verdict must be not less than the lowest estimates nor more than the highest."

The County Judge's Court based its award not on a consideration of this expert proof, or on any other matters before the Court, but upon its understanding of evidence in another proceeding before another judge of the Court involving fees to the attorney for the Estate, a proceeding of which Petitioner had no notice and in which he had no opportunity to participate. This information, in addition to being from a collateral proceeding, was factually incorrect.

The judgment of the County Judge's Court was then appealed by Petitioner to the District Court of Appeal of Florida, Second District. During the appeal and prior to a decision by that Court, the Appellee (Respondent here) in its brief admitted that the County Judge's Court had:

> ". . . based its final judgment for Appellant's attorney's fees on either an assumption of fact, or an inference from records in proceedings between Appellees [the Ancillary Administratrix and the Minor] to which the Appellant [Attorney-

> Petitioner] was not a party and of which he had no notice or opportunity to be heard, and in total disregard of the undisputed testimony in this case."

Counsel for the Appellees concluded that:

> "The Acting County Judge should be reversed and this cause remanded."

Upon this confession of error and consent to reversal, we believe that the District Court of Appeal of Florida to afford due process to Petitioner had no choice except to reverse the judgment of the County Judge's Court which it could have done without expressing any opinion as to the extent of the error or errors (See *Indian Harbor Estates, Inc.* v. *Wagner, et al*, 148 So. 2d 757 (1963).) or by entering judgment for the correct amount, since testimony had been given by both litigants almost three years earlier, *King* v. *L. & L. Investors, Inc.*, 136 So. 2d 671 (1962); *Sullivan* v. *Chase Federal Savings and Loan Association*, 132 So. 2d 343 (1961) or conceivably by sending the case back to the County Judge's Court for a new trial or further hearing. It did neither. Instead, the District Court of Appeal of Florida filed a *per curiam* opinion, recorded in 147 So. 2d 172, affirming the lower Court's judgment. In doing so, the District Court of Appeal of Florida ignored the Petitioner's contention that the County Judge's Court improperly considered matters outside the record (Appendix A, p. 4a) and concluded that (Appendix A, pp. 5a and 6a):

> "This appeal involved the amount of an attorney's fees . . . ."
>
> "We find . . . that the lower court had sufficient evidence from which he could determine that $10,000 would be a reasonable fee . . . ."

Each of these statements is erroneous. The appeal instead involved *the power* of the County Judge's Court to go outside the record of the case to determine the amount of Petitioner's fee (See Appendix A, p. 4a), for the County Judge's Court obviously had no competent evidence upon which to base its determination that $10,000.00 was the proper fee due Petitioner. More importantly, the Court based that determination, at least in part, on speculation and assumptions of fact following a private examination of outside records which were not in evidence, records as to which Petitioner was not a party in any way whatsoever.

The record shows that the County Judge's Court did not question the value of Petitioner's services but based its judgment on the assumption that since attorney's fees incurred by an Ancillary Administratrix had been paid, the amount that should be paid to Petitioner should be reduced to $10,000.00. The Court appears to have accepted the value of Petitioner's services as testified to by the Attorneys who appeared as experts, but simply reduced the minimum figure by about one-half because of considerations outside the record.

On review, the District Court of Appeal of Florida stated (Appendix A, p. 6a):

> "It is not in our province to view this record to decide whether or not . . . we would have given more or less amounts to appellant [Petitioner] for his services."

We believe, however, that due process of the law, requires more than Petitioner received and that, as stated in *King* v. *State*, 143 So. 2d 458 (1962):

> "'Due process of law' contemplates that upon appeal the Appellant be accorded a review of his case on its merits."

The inexplainable sidestepping of the issue by the District Court of Appeal of Florida in its *per curiam* opinion, was respectfully called to its attention by Petitioner in a Petition for Rehearing which was denied without opinion (Appendix A, p. 7a). At that time, it was one of some two hundred petitions filed with that Court during that calendar year, all of which were denied without opinion. *28 Academy of Florida Trial Lawyers Journal, Oct. 1963, p. 7.* When "palpably wrong decisions are virtually immunized from effective review" (*American Bar Association Journal, Dec. 1963, p. 1170*), particularly when they may violate Constitutional rights (*King v. State, supra*), we submit that the evil is of significant public concern.

Thereafter, Petitioner filed a Petition for Writ of Certiorari in the Supreme Court of Florida (Appendix A, pp. 8a-17a). No responsive pleadings were filed by any other party to the proceeding. Nevertheless, the request for Writ was denied without opinion, or oral argument (Appendix A, p. 18a). A Petition for Rehearing was then filed (Appendix A, pp. 18a-21a) and was likewise denied without opinion or oral argument (Appendix A, p. 21a).[1]

REASONS FOR GRANTING THE WRIT

The history of this case presents a shocking example of the denial to Petitioner of a Constitutional right, the right to a full and fair trial under the due process clause of the Constitution. Every litigant coming before a court of law in this country is entitled to at

[1] Motion for Written Opinion was also submitted but was returned by the Clerk of the Supreme Court of Florida for the stated reason that the Florida Supreme Court rules contained no provision for the filing of such a Motion.

least a fair hearing in his case and to a judicial decision based upon a record made in open court. We submit that this right has been denied to Petitioner here. Instead, the decision rendered against Petitioner was contrary to the evidence before the trial court and was obviously and admittedly based upon considerations within the trial judge's knowledge in Petitioner's case. More importantly, the decision was based upon a factually erroneous predicate.

The Petitioner's rights to a fair hearing were not vindicated at the appellate levels of review. The opinion of the intermediate appellate court, the District Court of Appeal of Florida, Second District, contained misstatements and misunderstandings of the facts and issues involved. Such errors could not exist were it not for the manner in which the Supreme Court of Florida has treated the certiorari jurisdiction granted to it to review the decision of the District Court of Appeal of Florida which in this case, we submit, has had the effect of virtually precluding effective appellate review of the trial court's decision. The Supreme Court of Florida, pursuant to its certiorari jurisdiction, has made it clear that it will review lower court decisions not in the interest of private litigants, but only to assure uniformity in decisions throughout the state (See *Lake* v. *Lake*, 103 So. 2d 639, 1958). In effect, the Supreme Court of Florida has developed the policy that it will not review a decision of the District Court of Appeal of Florida unless the District Court of Appeal reverses the trial court, or unless there has been at least one dissenting vote to affirmance of the trial court. This policy, in effect, immunizes the action of the District Court of Appeal of Florida from appellate review however erroneous that action

may be. This is the error in this case which we respectfully petition this Court to redress.

This is no mere dispute regarding attorney's fees. This case instead exemplifies the danger inherent in the practices of the Supreme Court of Florida, a danger which was recognized by Justice Hobson of that Court in his specially concurring opinion in *King* v. *State*, *supra*, when he noted at page 467 that:

> "This case points up the danger of the adoption of an 'ironclad' rule to the effect that the Supreme Court of Florida will not consider a petition for certiorari directed to a district court of appeal when such court's opinion consists merely of the words 'Per Curiam Affirmed' or [similar] language . . ."
>
> "If such an inexorable rule were in existence this court would be powerless to protect the constitutional right of the Petitioner or any person to due process of law."

We respectfully submit that Petitioner here has been deprived of a Constitutional right and that a principle of jurisprudence is at stake which is of vital importance to preserving the rights of individuals to a fair trial and to due process of law.

CONCLUSION

For the above reasons, we respectfully submit that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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